IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14297 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JERAMBHAI MALABHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14297 of 2004

MR BUNNA DUTTA for MR AR SHAIKH for Petitioner No. 1

MS HANSA B PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by District Magistrate, Bhavnagar, on 08th of September, 2004, in exercise of powers conferred upon him, under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger and dangerous person from 08th of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration in all eight crimes registered against the petitioner. Out of these 8 crimes, six crimes were registered against the petitioner for the breach of the provisions of the Bombay Prohibition Act, while two crimes were registered for the offences committed by the petitioner punishable under the Indian Penal Code. Six cases under the Bombay Prohibition Act came to be registered against the petitioner on 29th of May, 2003 before Vallabhipur Police Station, on 20th of June, 2003 before Ghoga Police Station, on 23rd of July, 2003 before Bhavnagar "D" Division Police Station and on the same day i.e. on 23rd of July, 2003 before Bhavnagar "D" Division Police Station. In these cases, the petitioner was found in possession of quantity of prohibited foreign liquor. So far as other two remaining crimes under the Penal Code is concerned, those were registered against the petitioner on 7th of April, 2003, before Alang Police Station at Bhavnagar and the second on 1st of July, 2004 before Shior Police Station. The offence registered before Alang Police Station at Bhavnagar was in respect of offences punishable under Sections 365, 143, 147, 148, 149, 323, 324 of the Indian Penal Code. The offences registered against the petitioner before Shior Police Station was in respect of the crime punishable under Sections 326, 323 and 114 of the Indian Penal Code. The detaining authority exhaustively relied upon the investigation papers in the above said eight cases registered against the petitioner. In all the above said eight cases, the petitioner is on bail.

3. In addition to above, the detaining authority also relied upon four in-camera statements recorded by the sponsoring authority on 30.8.2000 and verified by the detaining authority on 6th of September, 2004. The first witness, out of four witnesses, refers to an incident occurred before 20 days of the recording of the statement, wherein the petitioner demanded amount from the witness to the extent of Rs.15,000/-, and on refusal, the witness was attacked by the petitioner by a knife, in which the witness was slightly injured. A crowd was

gathered, but dispersed on account of fear of the petitioner. The second witness referred to an incident occurred before about 45 days of recording of his statement wherein the petitioner hired the vehicle of the witness and did not pay the hire charges. On demanding the hire charges by the witness from the petitioner, the witness was abused and was beaten by the petitioner. The petitioner was lashed with weapon like knife and he also damaged the vehicle of the witness. The third witness referred to an incident occurred before two months of the recording of his statement and forced the witness to conceal the petitioner in his house because the police was in search of the petitioner. On refusal, the witness was beaten and was abused. The petitioner and his accomplices had weapons like gupti and they threatened the witness that his house will be burnt. The fourth witness referred to an incident occurred before two months of the recording of his statement. When the witness was going to Village Vartej at about 7.00 p.m. in his vehicle, the petitioner and his accomplices accosted the witness and demanded his vehicle for some hours. On refusal by the witness to hand over his vehicle to the petitioner, the petitioner excited and started beating and abusing the witness. A crowd was gathered, but on account of fear and terror created by the petitioner and his accomplices, the crowd was dispersed. The witness was threatened that if the witness dared to file a compliant before the police against the petitioner, he would be done to death.

4. From the above material, the detaining authority came to the conclusion that the petitioner was engaged in activities of storing, selling and transporting prohibited liquor and was bootlegger within the meaning of the PASA Act. The detaining authority also came to the conclusion that the petitioner was headstrong person and of ferocious tendencies. The petitioner was in habit of picking up quarrels with the innocent citizens in executing his illegal activities and was creating the atmosphere of terror and fear. The detaining authority came to the conclusion that the petitioner was habitual offender and was a dangerous person also within the meaning of the PASA Act. The detaining authority reached to the subjective satisfaction that the activities of the petitioner were prejudicial to the maintenance of public order as well as adversely affecting the public health. The detaining authority also came to the conclusion that the activities of the petitioner were required to be prevented forthwith. The detaining authority after considering other measures which might have been taken against the petitioner under the general law, came to the

conclusion that there was no other alternative except to detain the petitioner under the PASA Act to prevent the illegal activities of the petitioner forthwith. The detaining authority therefore passed the order of detention against the petitioner, as aforesaid, which is under challenged in this petition.

5. Learned Advocate Ms. Banna Dutta for the petitioner and learned AGP Ms. Hansa Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration. The receipt of Speed Post i.e. EMS Speed Post and a copy of the communication received by the detenu vide letter dated 1st of November,2004 which are submitted by learned Advocate for the petitioner is placed on record.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the order in question is vitiated on account of violation of the right of the petitioner as guaranteed under Article 22(5) of the Constitution of India to have his representation against the order of detention to be decided by the competent authority as expeditiously as possible.

7. There is no dispute that the detenu petitioner through his Advocate preferred representation dated 15th of October, 2004 to the detaining authority. According to the receipt obtained by the detenu of Speed Post Courier, the said representation received by the detaining authority on 18th of October, 2004. However, the detaining authority, as stated in affidavit-in-reply, that the said representation was received by his office on 19th of October, 2004. The said representation was forwarded to the Government and Advisory Board by the detaining authority vide his letter dated 21st of October, 2004. The concerned Department of the State Government received the said letter dated 21st of October, 2004 of the detaining authority along with representation of the detenu on 28th of October, 2004. The matter was placed before the Secretary on 29th of October, 2004 and was processed day-by-day and ultimately the representation came to be rejected on 1st of November, 2004 by the State Government. The decision was communicated to the detenu at Palanpur District Jail vide letter dated 1st of November, 2004. However, it could not be ascertained that when this decision was actually received by the detenu at Palanpur District Jail.

8. From the above undisputed factual data, the contention which was vehemently urged in this respect, firstly, forwarding the representation of the petitioner late to the State Government by the detaining authority and secondly in respect of late communication of the same to the detenu.

9. Article 22(5) of the Constitution of India gives a detenu valuable right to represent against the order of detention. The concept of law is that, such right must be afforded as expeditiously as possible. Meaning thereby that not only the detenu must be afforded the earliest opportunity of making a representation against an order of detention, but the right stretches to the extent that the said representation should be considered and disposed of by the concerned authority, be it Government, as soon as it is received, and unexplained delay in disposing of such representation violates the right of detenu as enshrined under Article 22(5) of the Constitution of India, resulting in vitiating the order of detention. The constitutional right cannot be violated by any executive authorities including Government. In the matter of RAJAMAL vs. STATE OF T.N. AND ANR., as reported in 1999 (1) SCC 417 acknowledging the right of detenu to have the adjudication of the representation as expeditiously as possible, the Apex Court observed that it is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution of India for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 conveys the message that the representation should be considered and disposed of at the earliest. The Apex Court also observed that it does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. It is within the power of the court to consider whether the delay was occasioned due to permissible reasons or unavailable causes. Even longer delay can as well be explained and delay of very short period may be fatal for the detention order. So, the test is not the duration or range of delay, but how it is explained by the authority concerned.

10. In the present case, the representation preferred by the detenu through his Advocate appears to have been reached to the detaining authority on 18th of October, 2004, though it is stated in the affidavit that the Department of detaining authority received such

representation on 19th of October, 2004. Whatever may be the case, it is certain that the same came to be forwarded to the Government vide letter dated 21st of October, 2004 by the detaining authority, which reached to the concerned Government Department on 28th of October, 2004. Though the process after 28th of October, 2004 to 1st of November, 2004, the day on which the decision for rejection of representation was taken, is properly explained, but, however, the period from 18th of October, 2004 to 21st of October, 2004 is not explained by the detaining authority to the satisfaction of this Court. Therefore, the right of the detenu under Article 22(5) of the Constitution is violated irrespective of the tenure of the delay caused in deciding the said representation. Factually, the delay is caused in forwarding the representation by the detaining authority to the appropriate government, but it resulted in deciding the representation with delay, causing violation of above said constitutional right of the petitioner. Therefore, the order challenged in this Special Civil Application is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the District Magistrate, Bhavnagar, on 08th of September, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Jerambhai Malabhai Chauhan is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

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